

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MELODY Z.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. L 2007010743

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at Lake Elsinore, California on February 21, 2007.

Claimant was represented by her mother (parent).

The Inland Regional Center (agency) was represented by Vince Toms.

Oral and documentary evidence was received and the matter was submitted on February 21, 2007.

ISSUES

1. Must the agency implement services even though parent refuses to sign the notification and agreement form (form 35C) acknowledging agreement with the current Individual Program Plan (IPP)?

2. Is claimant entitled to “aid paid pending” or “reimbursement” for services that have not been provided since January 30, 2007?

3. May the agency conduct quarterly reviews/evaluations of services being rendered to claimant to ensure the agency’s vendors are providing appropriate services?

FACTUAL FINDINGS

1. Claimant, whose date of birth is January 7, 2001, is a six-year-old female who qualifies for agency services based on diagnoses of Autism and Down Syndrome.

2. On January 12, 2005, an IPP meeting was conducted. Claimant's parent and the agency agreed on services and parent signed the IPP on the date of the meeting, January 12, 2005. During 2005, the services were provided as specified in the 2005 IPP and an October 26, 2005 Mediation Agreement.

3. On January 11, 2006, claimant's annual IPP meeting was held. Parent and the agency orally agreed on services and parent was given the IPP signature page (35C form) to sign¹. The written IPP had not yet been prepared, so parent declined the agency's request that she sign the 35C form.

4. On January 13, 2006, parent faxed a letter concerning the January 11, 2006 IPP meeting to the agency. Parent's letter stated, in pertinent part:

"At the IPP meeting, we reviewed [claimant's] current situation and develop (sic) the IPP. I'm glad that there was no disagreement in the IPP as no new service[s] [were] requested. I asked you to type the IPP out, but later I realized that parent should play [a] very important role in IPP according to Lanterman Act. So I typed the IPP out. Although there's no stipulation about the format, I tried to be close to IRC's format. Hope my IPP skill would improve year by year. (Agency Exhibit 8.)"

Parent included a signed copy of her version of an IPP with her January 13, 2006 letter.

5. Claimant was, and currently is, participating in the California Medicaid Waiver Program. As part of the program the agency receives funding for portions of claimant's IPP services from the Medicaid Waiver Program. The agency, as a participant in the Medicaid Waiver Program, is subject to periodic audits to ensure compliance with Medicaid requirements. One of the requirements is that there be a signed IPP justifying the services being provided by the agency.

6. The IPP drafted and signed by parent did not contain all of the provisions

¹ On March 8, 2005, the standard IPP signature page was revised by the agency. The new form included a notification about the potential effect of the Family Cost Participation Program, legislation which became effective on January 1, 2005. On the revised form, agency clients were required to sign an acknowledgment that they had received a copy of the California Department of Developmental Services Family Services Cost Participation Program Guide. Additionally, by signing the new form, the client indicates they agree with the IPP and that they are satisfied with their current Program Coordinator.

required in an IPP document. For example, parent's IPP did contain "target dates," "time lines," and it lacked complete "descriptions." Parent's IPP did not, however, deviate from the agency's written IPP² concerning the nature and frequency of services claimant was to receive. According to the agency's Program Manager, if parent's IPP and the agency's IPP were combined, "we probably have a pretty good document."

7. The agency talked with parent about the IPP documents and the need for parent to sign the agency's IPP, which contained all the required information for a valid IPP. Parent took the position that she had signed an IPP, albeit her draft, and she refused to sign the agency's IPP, form 35C.

8. The agency was concerned that if there were a Medicaid audit of claimant's case the agency would be found out of compliance and would have to reimburse Medicaid for some, or all, of the funds provided by Medicaid during the 2006 period. Notwithstanding this concern, the agency continued providing services to claimant pursuant to the "unsigned" 2006 IPP³.

9. Pursuant to agency policy, the agency conducts quarterly reviews of services being provided to clients to ensure that the providers (contract vendors hired by the agency to provide certain services) are providing appropriate services. The quarterly reviews consist of reviewing reports from the respective vendors as well as conducting site visits at the clients' homes, schools and other facilities where the services are being provided. In claimant's case, the agency was having difficulty scheduling quarterly visits at claimant's home to observe claimant's in-home program(s). Consequently, on May 9, 2006, the agency sent a letter to parent in its continuing attempt to schedule the first quarterly review of services for the 2006 IPP period. In pertinent part, that letter stated:

"This letter is to try to schedule a home visit so that I can come out to meet you and [claimant] for the quarterly report that was due last month. I left a telephone message on 5-8-2006 to see if I can come by on 5-9-2006 for a home visit, but I did not hear back from you. I need to see [claimant] this month so that her status at Inland Regional Center is up to date. Also, because [claimant] is on the voluntary Medicaid Waiver program, it is also important for me to see [claimant] every 3 months.

Please call me or email me at your earliest convenience with a date and time that is convenient for me to come by. . . If I do not hear from you and see [claimant] by 5-22-06, then I will assume that services are no longer needed and will proceed to inactivate [claimant's] case. At that

² The agency completed its written IPP for the January 11, 2006 IPP meeting on January 31, 2006 and a copy of the written IPP was provided to parent.

³ The agency took the position that parent's signature on her own version of the 2006 IPP was insufficient, as it lacked certain provisions that are required by the agency and Medicaid.

time, [claimant] would not be eligible for the Medicaid Waiver program as well. However, if the case is inactivated, you can call to reactivate the case. (Agency Exhibit 9.)”

10. By fax, dated May 12, 2006, parent notified the agency that she would not comply with its request to conduct a quarterly home visit unless the agency first provided parent with “the Medicaid Waiver’s regulation and any government regulation regarding the mandatory quarterly visit.” (Agency Exhibit 10.)

11. Telephonic and written communications between parent and the agency concerning the necessity of parent signing an appropriate IPP and the need for a home visit continued. Consequently, on September 12, 2006, the agency sent claimant a letter, which provided, in pertinent part:

“Alice Chu met with you and [claimant] on 1-11-06 for the IPP meeting to discuss goals for this year. She spoke with you on 4-13-06 to schedule a home visit for the quarterly review. However, [claimant] had just been pulled out of school and you were not available to meet for the month of April. Ms. Chu sent letters dated 5-9-06 and 5-30-06 to schedule a home visit to complete the quarterly review. . . She left messages on 7-12-06 and 7-20-06 to try to schedule a home visit.

The Lanterman Act 4648 (a)(7) states, ‘no service or support provided by any agency or individual shall be continued unless the consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representative, including those appointed pursuant to Section 4590 or subdivision (e) of Section 4705, is satisfied and the regional center and the consumer or, when appropriate, the person’s parents or legal guardian or conservator agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

In 1-2006 when you and Ms. Chu met for the IPP meeting, you did not consent to sign the IPP. . . Without a signed IPP, there is no agreement to provide funding for any services. Without seeing [claimant] in person, we are not able to verify the progress that [claimant] is making in each of her IPP goals.

As of 9-12-2006 IRC is funding in-home ABA with CARD and respite through Inland Respite. However, if the IPP is not signed and does not include proper funding statements, then IRC holds no obligation to fund any service.

[Claimant] is institutionally deemed on the Medicaid Waiver program and needs to be seen on a quarterly basis. If face to face contact is not made on a quarterly basis, then she will no longer be eligible for the

Medicaid Waiver program. If this should happen, [claimant] will be disenrolled from the waiver program and [claimant] will lose her MediCal benefits.

It is imperative that Ms. Chu meets with both you and [claimant] for her case to remain active and for [claimant] to continue having her services. . . If Ms. Chu does not meet with [claimant] within 30 days of receipt of this letter, then [claimant's] case will be inactivated and services terminated. If [claimant's] case is inactivated, you have the right to contact this office at any time to have her case reactivated. (Agency Exhibit 16.)”

12. It was not until October 26, 2006 that the agency was able to conduct a home visit to assess claimant's services. Then, by fax dated October 27, 2006, parent wrote, in pertinent part:

“Thanks for your home visit yesterday.

During your home visit, you observed [claimant] in her ABA session and you asked me to sign some documents. . .

Thank you for giving me a copy of the Guidelines regarding Medicaid Waiver. Regretfully this document is IRC's procedure guide not Medicaid Waiver's. Besides its 'face-to-face contact' is required in the **facility**, which is consistent with Lanterman Act, not in home.

During the visit, you restated to use IRC's standard IPP form for IPP. I informed you that I would like to cooperate by attaching my signed IPP of Jan. 2006 to your typed IPP and I agreed to sign in your typed IPP but I'll write beside my signature that my signature indicates my attached part is what I agreed. (Agency Exhibit 18.)”

Parent's communication reveals that she did not want to allow future quarterly visits and although she agreed to combine the IPP she drafted with the IPP the agency drafted, she wanted to sign the agency's form 35C with the notation that her signature only pertained to the provisions of the IPP she drafted.

13. On October 31, 2006, the agency issued a “Quarterly Report.”

14. On November 6, 2006, the agency sent parent a letter informing her:

“This letter is in response to your fax dated 10-27-06. On 10-26-06 Ms. Chu made a home visit to see [claimant] and to request again for you to sign the IRC IPP that was completed in 1-2006. You stated at the home visit and in your 10-27-06 fax that you would only be willing to consent to your IPP and not IRC's IPP and consent form ICRC 35C.

Unfortunately, this is unacceptable. It is necessary for you to sign the IPP completed by Ms. Chu at IRC because it includes the necessary IRC

funding statements. Without this signed contract between you and IRC, there is no legally binding contract to continue to fund the current services for [claimant].

As stated at the home visit by Ms. Chu, if the ICRC 35C, which is the legal document that goes along with the IPP, is not signed by you, then [claimant's] case will be inactivated at IRC. As a result, [claimant's] current services . . . will be terminated. Furthermore, once [claimant's] case is inactivated, she will no longer be eligible for the Medicaid Waiver program and [claimant] will lose her MediCal benefits. [Claimant] needs to be seen on a quarterly basis based on the contract IRC has with the state.

Ms. Chu has sent you a copy of the IRC IPP and ICRC 35C that needs to be signed to keep [claimant's] case active at IRC. If we do not receive the signed ICRC 35C for the IPP within 30 days of this letter, then [claimant's] case will be inactivated and services terminated. If [claimant's] case is inactivated, you have the right to contact this office at any time to have her case reactivated. (Agency Exhibit 20.)”

15. Notwithstanding the agency's continued insistence that parent sign the agency's IPP, parent steadfastly refused. The agency, however, continued providing services.

16. On January 11, 2007, claimant's annual IPP meeting was held. As a result of the IPP meeting the agency and parent agreed on the nature and extent of the services claimant should receive during 2007.

17. After the January 11, 2007 IPP meeting, parent again drafted her version of an IPP document, signed the document and provided the agency with a copy of her signed IPP. In a fax, dated January 12, 2007, claimant advised the agency of the following: “If you would like to use your format or disagree with any component in the IPP, please let me know in written (sic) or send me a copy of your written IPP.” (Agency Exhibit 24.)

18. By letter, dated January 17, 2007, the agency addressed the January 11, 2007 meeting and parent's January 12, 2007 fax. In pertinent part, the agency informed parent:

“At the end of the meeting Consumer Services Coordinator (CSC) Alice Chu offered you the ICRC 35C form for your signature, which verifies agreement with the IPP. You refused to sign the 35C.

The ICRC 35C is the signature form for the IPP and by signing it the parties agree to the services and supports in the IPP. The Inland Regional Center (IRC) interprets a refusal to sign an ICRC 35C as evidence of a disagreement with the provision of all services in the IPP and therefore [the] plan cannot be implemented.

The decision to not implement [claimant's] IPP is based on the mandates of the Welfare and Institutions Code Section 4646 (g) which states: 'An authorized representative of the regional center and the consumer or, where appropriate, his or her parents, legal guardian, or conservator, shall sign the individual program plan prior to its implementation.'

Further, the IRC Administration shall discontinue the services and supports in the IPPs dated [January 11, 2006] and January 11, 2007 on the 30th day of January 2007. A 30 day notice was previously sent to you on 11-7-06. I did not terminate services in December because I felt confident that you would sign the 35C when you met with Ms. Chu last week. The IPP is composed of time-limited objectives, which are reviewed yearly for the measurement of both program effectiveness and reasonable progress. Services and supports shall be discontinued until a new IPP can be agreed upon and an ICRC 35C is signed. (Agency Exhibit 25.)"

19. Services were discontinued on or about January 30, 2007 due to parent's refusal to sign the 35C form.

20. Parent did not continue funding any programs after services were discontinued.

21. On February 16, 2007, parent faxed a signed 35C form to the agency. The 35C form, which was signed by parent on February 14, 2007, limits parent's signature and agreement to the IPPs, as follows: "My signature indicates that I agree with the components in the IPPs that I signed in 1/11/06 & 1/11/07." The IPPs that parent signed on 1/11/06 and 1/11/07 were the IPPs parent drafted, not the IPPs drafted by the agency.

22. The agency is willing to combine parent's version of the 1/11/07 IPP with its IPP as long as parent is willing to sign a 35C form that agrees with the combined IPPs. The agency is then ready and willing to implement the services in the 2007 "combined" IPP.

23. Parent is unwilling to sign the 35C form as it pertains to the 1/11/07 IPP drafted by the agency. When asked why, parent was unable to articulate any valid reason for her refusal. Parent merely stated that she did not agree with all of the language in the IPP the agency drafted. When asked to identify the specific language with which she disagreed, parent was unable to do so. Similarly, parent was unable to identify any provisions in the agency drafted IPP that were detrimental to claimant; that is, provisions that either denied services and supports for claimant or provided unnecessary services and supports to claimant.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4646, subdivision (g) provides, in pertinent part: "An authorized representative of the regional center and the consumer or, where appropriate, his or her **parents**, legal guardian, or conservator, **shall sign the individual**

program plan prior to its implementation.” (Emphasis added.) In the present instance, parent has refused to sign an appropriate IPP that meets the standards set by the agency and that contains information, such as time-lines, provision dates, etc., required by agency’s contracts with its vendors and co-funding entities, such MediCal/Medicaid. (Findings 3, 5, 7, 8, 11, 12, 14, 15, 17, 18, 21 and 23.) The agency acted in a commendable manner by continuing to provide services for over one year without a signed IPP, however, it can not continue to do so indefinitely. As set forth in Findings 11, 14, and 18, the agency gave claimant’s parent more than adequate notice that her case would be inactivated if parent did not sign the agency drafted IPP. Parent did not sign the IPP, therefore, claimant’s case was appropriately inactivated and services discontinued.

2. Understandably, parent wants to take an active role in the development of claimant’s IPPs, however, her insistence on controlling the process is detrimental to the agency and the best interests of claimant. Parent’s IPP does not substantively deviate from the agency’s IPP. The documents agree on the nature of services and supports that claimant should be provided during 2007. The wording is different. The agency’s IPP contains language that meets its requirements and the requirements of the agencies with which it contracts. There are no conflicting provisions and it is difficult, if not impossible, to determine why parent will not sign a 35C form that acknowledges agreement with the IPP drafted by the agency. Welfare and Institutions Code section 4646, subdivision (g) provides, in pertinent part: “If the consumer or, where appropriate, his or her **parents** . . . does not agree with all components of the plan, they **may indicate that disagreement on the plan.** Disagreement with specific plan components shall not prohibit the implementation of services agreed to by the consumer or, . . . parents. . .” Welfare and Institutions Code section 4646, subdivision (g)’s referral to “the plan” means the agency’s plan as articulated in the IPP it drafts. If parent disagrees with any portion of the plan, she may indicate that disagreement on the plan, sign the 35C form, and the agreed upon portions shall be implemented until the disagreement(s) are resolved, either informally or through formal appeal proceedings. Accordingly, in the present instance, both IPPs should be combined and parent should sign a 35C form pertaining to the “combined” IPP. If parent has any other concerns with the IPP, she may indicate those concerns in a separate writing and have that writing appended to the IPP. This would allow her to indicate her disagreement as a part of the IPP, which is the functional equivalent of indicating any disagreement “on the plan.”

3. As noted in Finding 20, parent has not funded any service since claimant’s case was inactivated by the agency. Consequently no aid paid pending or reimbursement is warranted.

4. The agency is entitled to review provision of services to a claimant provided the review is reasonable in its time, place, frequency and duration. In fact, an agency would be remiss if it failed to review its provision of services. Such review is necessary to protect agency clients and the taxpaying public. In the present instance, the agency’s policy of reviewing services during business hours, at the place the services are being provided (in the home), on a quarterly basis is very reasonable and parent must make every effort to ensure the agency is allowed to conduct such reasonable reviews/assessments of services it is providing to claimant.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The IPP drafted by parent and the IPP drafted by the agency as a result of the January 11, 2007 IPP meeting shall be combined and shall constitute claimant's 2007 IPP. Parent may indicate any disagreement(s) with the 2007 IPP on a separate document and the document shall be attached to the 2007 IPP.
2. Parent shall sign a 35C form for the 2007 IPP within 30 days of the date of this decision. If parent signs a 35C form for the 2007 IPP within 30 days of the date of this decision the services indicated in the 2007 IPP shall be implemented. If parent does not sign a 35C form for the 2007 IPP, within the 30-day time frame, claimant's case will remain inactive. Thereafter, if parent requests resumption of services, an IPP meeting shall be convened to determine the current nature and level of required services.
3. Agency shall be allowed to conduct quarterly reviews of any services it provides, and parent and claimant shall cooperate with scheduling any requested visits within two weeks of the agency's request for such review. The review shall take place during normal business hours at the place where the services are being provided to claimant.
4. Parent's request for "aid paid pending" and/or "reimbursement" is denied.

DATED: _____

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5 (b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.